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March 11, 2019

By ECF

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals
For the Ninth Circuit

Re: *League of United Latin Am. Citizens v. Wheeler*,
No. 17-71636 (9th Cir.)

Dear Ms. Dwyer,

The New York Attorney General's office will argue for Intervenor status, on behalf of seven states and the District of Columbia, in the above appeal scheduled for *en banc* rehearing March 26, 2019. I write to advise the Court of recent pertinent authority pursuant to F.R.A.P. 28(j).

Specifically, legislation banning or restricting the use of chlorpyrifos has been enacted in one of the Intervenor states and introduced in three other Intervenor states and elsewhere.¹

Hawaii—Under Act 45, enacted June 13, 2018, no person shall “use or apply any pesticide containing chlorpyrifos as an active ingredient.” Permitted uses may continue until December 31, 2022. The restriction was included in Act 45, signed into law June 13, 2018.

¹ The Intervenor states do not take a position herein on any such legislation.

New York—Identical bills prohibiting the use of chlorpyrifos are pending in the Senate (S.2156) and the Assembly (A.2477).

California—A bill introduced February 21, 2019 (S.B. No. 458) would prohibit the use of pesticides containing chlorpyrifos.

Maryland—Identical bills banning the use of chlorpyrifos are pending in the House (H.B. 275, 439th Sess.) and Senate (S.B. 270, 439th Sess.).

Elsewhere—Bills to prohibit the use of chlorpyrifos are pending in Arizona (SB 1282), New Jersey (A3496; S1810), Oregon (H.B. 3058; S.B. 853), and Virginia (H.B. No. 2580).

Despite these state-level efforts, federal action is necessary. Banning chlorpyrifos within the state borders will not prevent the sale and consumption of food containing chlorpyrifos residues that originated in states where the use of chlorpyrifos on food crops is not prohibited. (See Intervenor's Reply Brief, Dkt. Entry 87, at 21-22.)

Respectfully submitted,

/s/

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**CERTIFICATE OF COMPLIANCE
WITH FEDERAL RULE OF APPELLATE
PROCEDURE 28(j) AND NINTH CIRCUIT RULE 28-6**

Pursuant to Federal Rule of Appellate Procedure 29(j) and Ninth Circuit Rule 28-6, the undersigned counsel hereby certifies that the foregoing letter complies with the volume limitations in that it is proportionately spaced, has a type-face of 14 points, and the body of the letter contains less than 350 (251) words, as measured by the word processing system used in its preparation (Microsoft Word).

/s/ Frederick A. Brodie
FREDERICK A. BRODIE
Assistant Solicitor General